

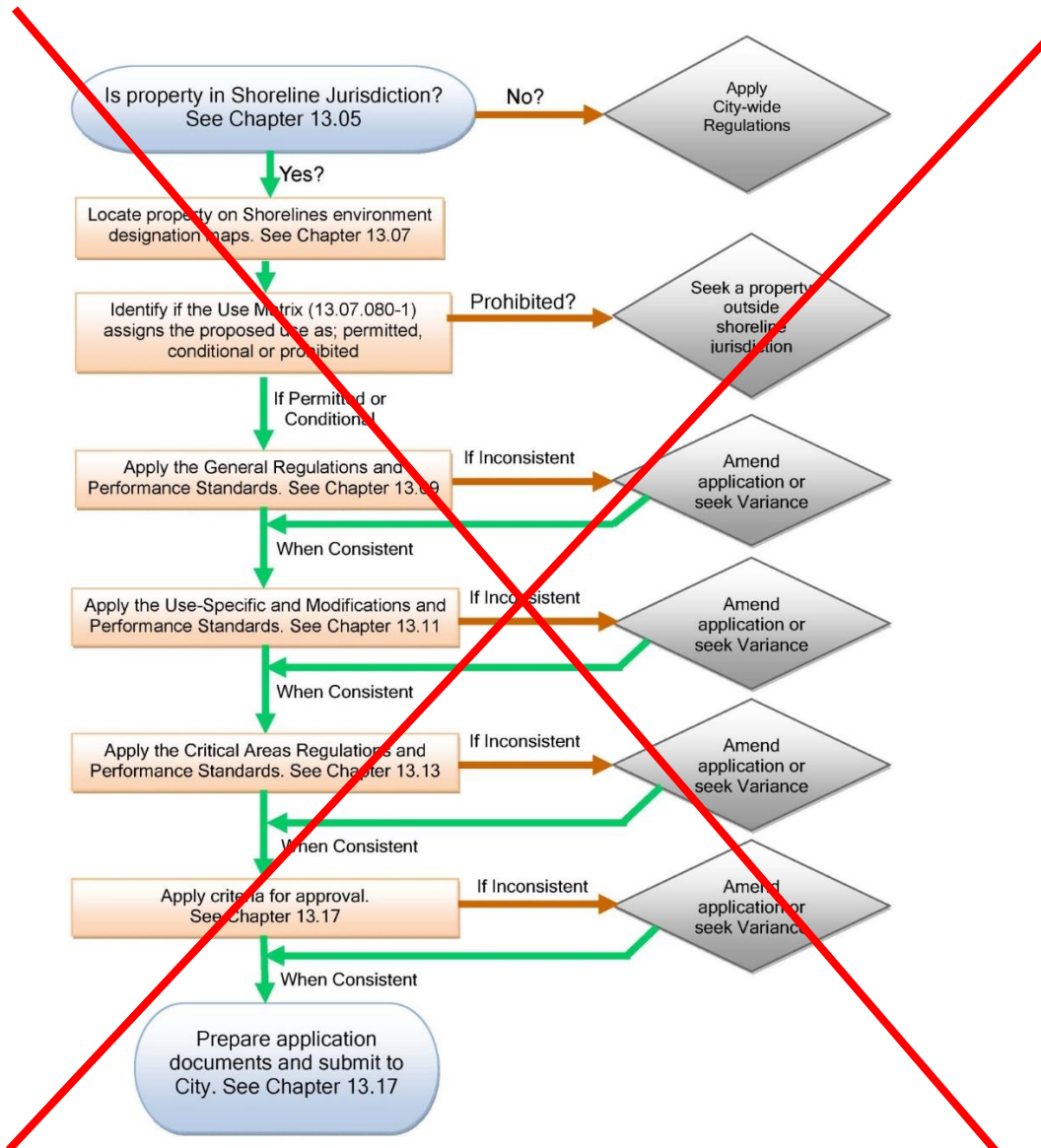
2019 Shoreline Management Code Amendments

Proposed amendments are shown in underline/strikethrough format below. Hyperlinks are shown in underlined blue text. Notes that are not part of the proposed code language are shown in text boxes like this one following the amendments. Skipped sections are indicated by three asterisks: *

Title 13 SHORELINE MANAGEMENT*

Chapter 13.00 READER'S GUIDE

* * *13.00.020 Flow chart.



New Chart

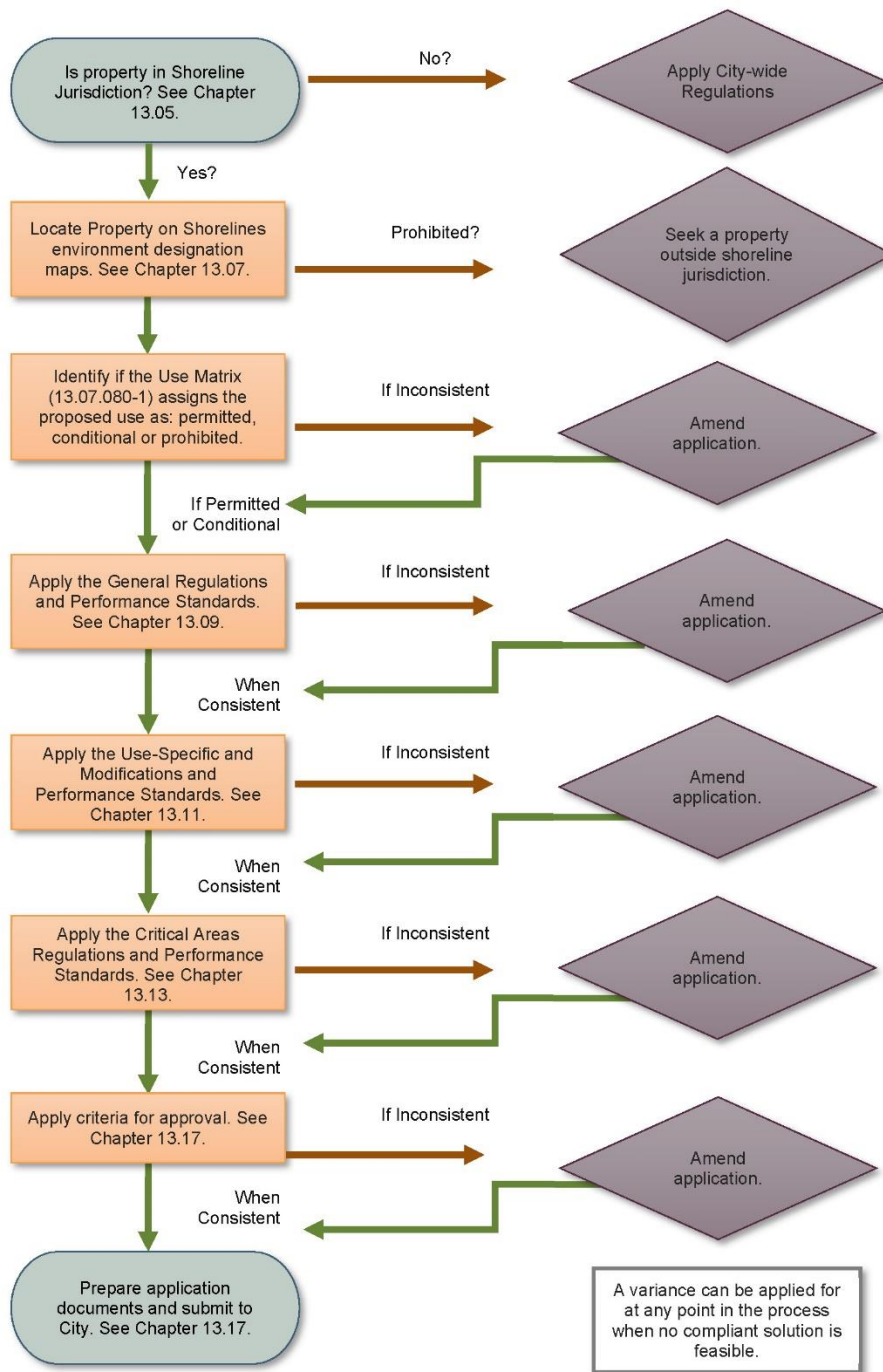


Figure 13-1. Flow Chart

NOTE: Change to flow chart is intended to clarify desire to first amend proposal (seek other options) before seeking variances.

* * *

Chapter 13.03 DEFINITIONS

13.03.010 Definitions.

Definitions established by WAC 173 and Chapter 90.58 RCW have been incorporated herein. Should definitions in the WAC or RCW be substantively amended, those amendments shall apply in Bothell's shoreline jurisdiction.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.b regarding changes to WAC definitions.

* * *

"Boat launch" means a slab or set of pads, rails, planks, or graded slope which extends waterward of the OHWM, and is used for transferring watercraft between uplands and the water by means of a trailer, hand, or mechanical device.

NOTE: New definition added to distinguish boat launches from other in-water facilities, with slight modification per Shoreline Board input.

* * *

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any stage of water level. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the city that binds land to specific patterns of use, including but not limited to subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development does not include the following activities:

- A. Interior building improvements;
- B. Exterior structure maintenance activities, including painting and roofing;
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding; ~~and~~
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries; and
- E. Dismantling or removing structures if there is no other associated development or re-development.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.b regarding WAC definition of development.

* * *

“Floodway” means the area established in effective Federal Emergency Management Agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

* * *

“In-Lieu-Fee Program” means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from an individual or a number of individuals who are required to conduct compensatory mitigation required under a wetland regulatory program. The sponsor may use the funds pooled from multiple permittees to create one or a number of sites under the authority of the agreement to satisfy the permittees’ required mitigation.

NOTE: Addition is response to Shorelines Board Member request. The definition is taken from Ecology’s *Wetland Guidance for CAO Updates: Western Washington Version* (Bunten and others, 2016)
<https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>

* * *

“Wetland ~~categories~~ classes,” “~~categories~~classes of wetlands,” or “wetland types” means the descriptive classes of the wetlands taxonomic classification system of the Washington State Wetland Rating System for Western Washington (Revised), Department of Ecology Publication No. ~~14-06-029~~~~04-06-025~~.

* * *

NOTE: While adding a definition of “reach” was discussed at the April 8 meeting, staff and consultants realized afterward that doing so would create confusion with the reaches used in Chapter 13.07, and that identifying the extent of the upstream and downstream WRIA 8 reaches of the Sammamish in 13.13.020.G.5.d(4) would be best.

“Wetlands of High Conservation Value” (formerly called Natural Heritage Wetlands) means those wetlands identified by the Washington Natural Heritage Program at the Department of Natural Resources as either high quality undisturbed wetlands or wetlands that support rare or sensitive plant populations.

NOTE: Addition is response to Ecology SMP Update Checklist item 2016.b regarding the 2014 update of the wetlands rating system.

“WSDOT facility maintenance and safety improvements” means the following consistent with RCW 90.58.356:

- A. Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW 46.04.560;
- B. The lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;

C. Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;

D. Maintenance occurring within the right-of-way; or

E. Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.c regarding the maintenance, repair, and replacement of WSDOT facilities per RCW 90.58.356.

* * *

Chapter 13.07 **SHORELINE ENVIRONMENT DESIGNATIONS, USE MATRIX, AND DEVELOPMENT STANDARDS**

NOTE: Title of chapter amended for wayfinding to indicate that use tables and development standards are here as well. Maps and references below are updated to reflect changes approved by the board in Attachment 3 to the April 8 packet. References to a reach outside the Bothell Planning Area have been deleted.

* * *

13.07.070 Use environment interpretation.

A. The city has designated use environments in its city limits and predesignated use environments in its annexation areas consistent with the maps at the end of this section, listed as follows:

1. Figure 13.07.070-1: Shoreline Environment Designations Reach 1.
2. Figure 13.07.070-2: Shoreline Environment Designations Reach 2.
3. Figure 13.07.070-3: Shoreline Environment Designations Reach 3.
4. Figure 13.07.070-4: Shoreline Environment Designations Reach 4.
5. Figure 13.07.070-5: Shoreline Environment Designations Reach 5.
6. Figure 13.07.070-6: Shoreline Environment Designations Reaches 6 and 15.
7. Figure 13.07.070-7: Shoreline Environment Designations Reaches 9 and 10.
8. Figure 13.07.070-8: Shoreline Environment Designations Reaches 11 – 14.
9. Figure 13.07.070-9: Shoreline Environment Designations Reaches ~~7a and 8~~ 7a and 8.
10. Figure 13.07.070-10: Shoreline Environment Designations Reach 7b.

* * *

Shoreline Designations

- Aquatic
- High Intensity
- High Intensity - Park
- Marina
- Natural
- Shoreline Residential
- Urban Conservancy
- City Limits
- Planning Area Boundary
- SMP Reaches

Source: ESRI, King County, Snohomish County, City of Bothell

Scale: 0 to 500 Feet

Shoreline Environment Designations: Reach 1
City of Bothell Shoreline Master Program, April 17, 2019
Figure 13.07-070

Shoreline Designations

- Aquatic
- High Intensity
- High Intensity- Park
- Marina
- Natural
- Shoreline Residential
- Urban Conservancy
- City Limits
- Planning Area Boundary
- SMP Reaches

0 250 500
Feet

Source: ESRI, King County, Snohomish County, City of Bothell

Shoreline Environment Designations: Reach 2
City of Bothell Shoreline Master Program, April 17, 2019
Figure 13.07.070-2

Figure 13.07.070-3. Shoreline Environment Designations Reach 3

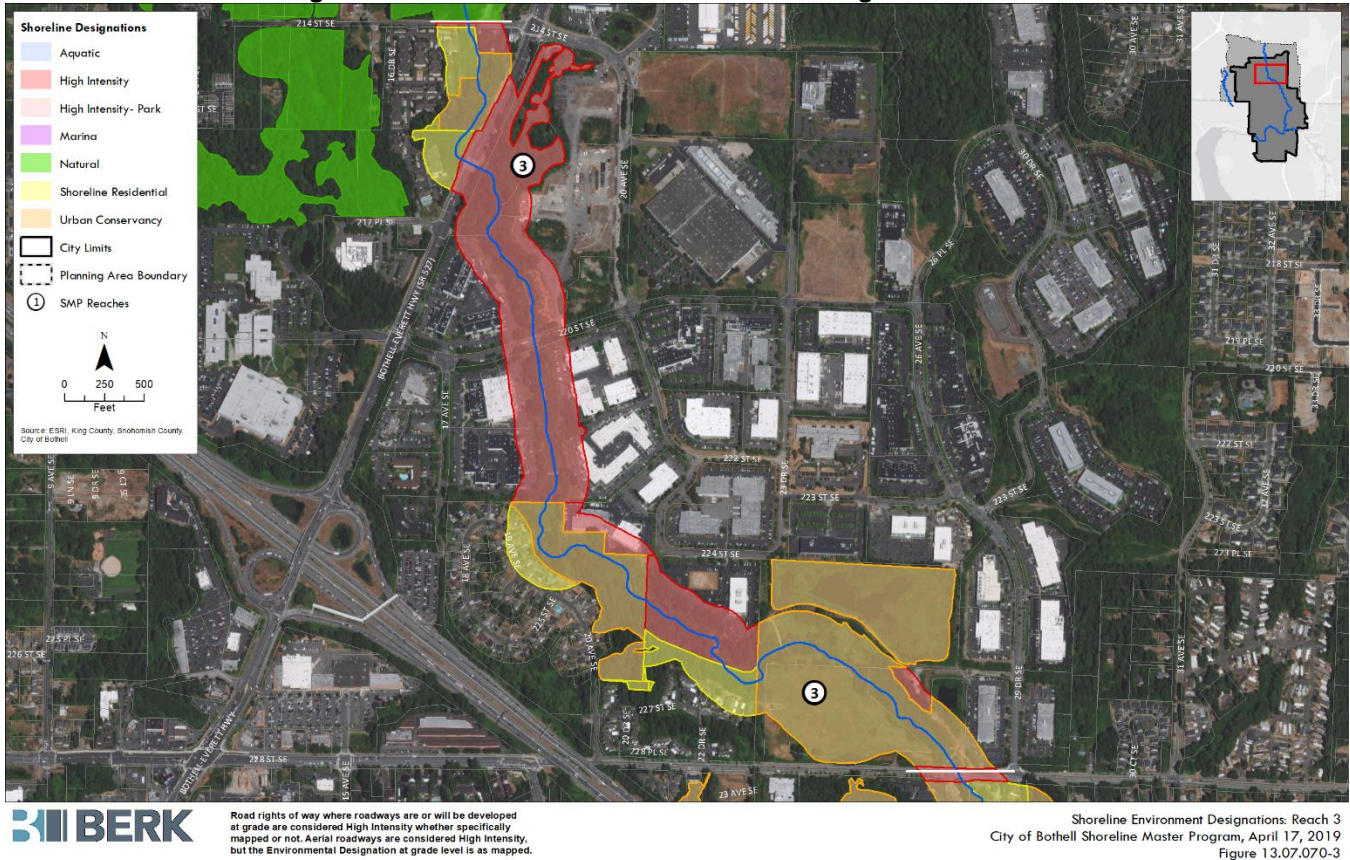


Figure 13.07.070-4. Shoreline Environment Designations Reach 4

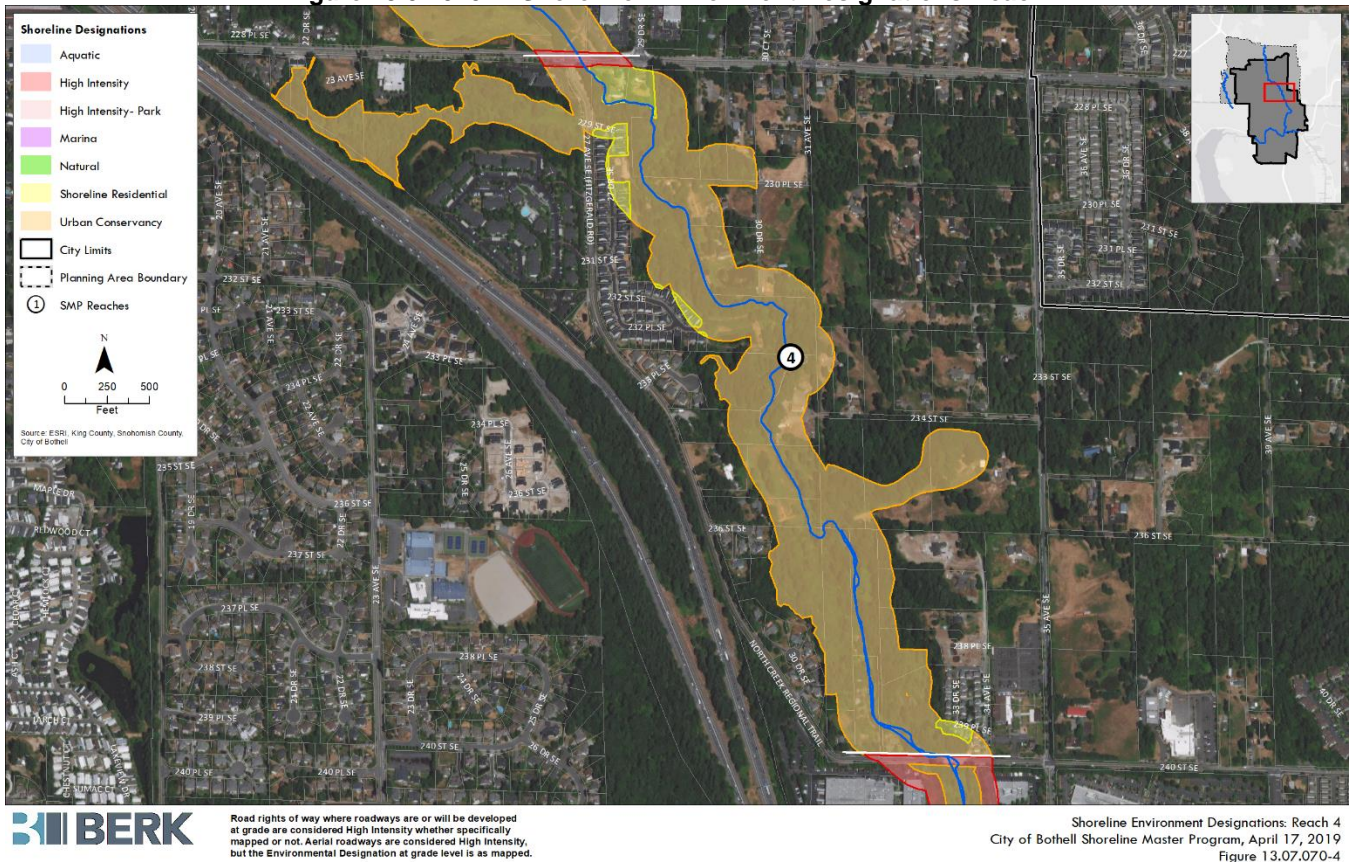


Figure 13.07.070-5. Shoreline Environment Designations Reach 5

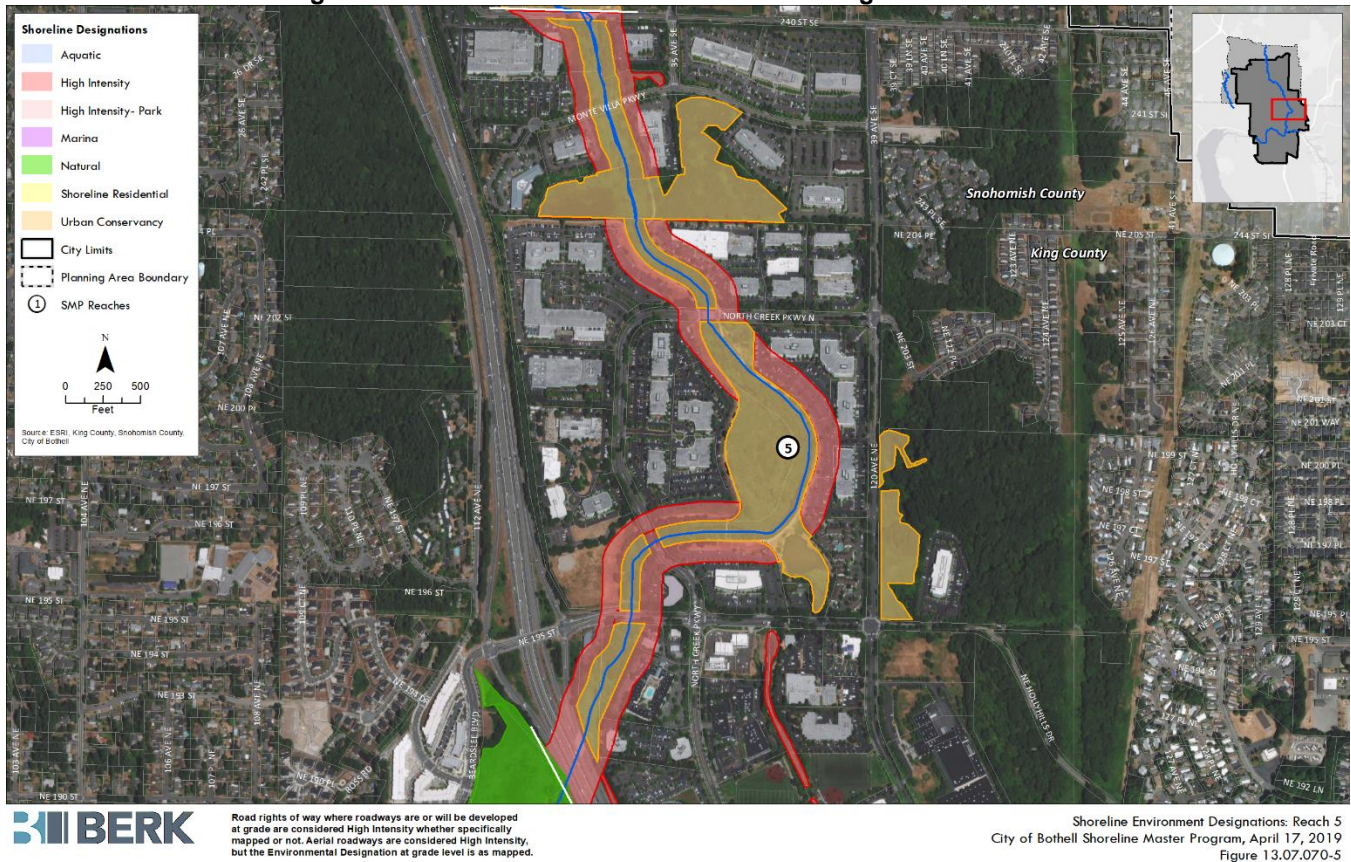


Figure 13.07.070-6. Shoreline Environment Designations Reaches 6 and 15

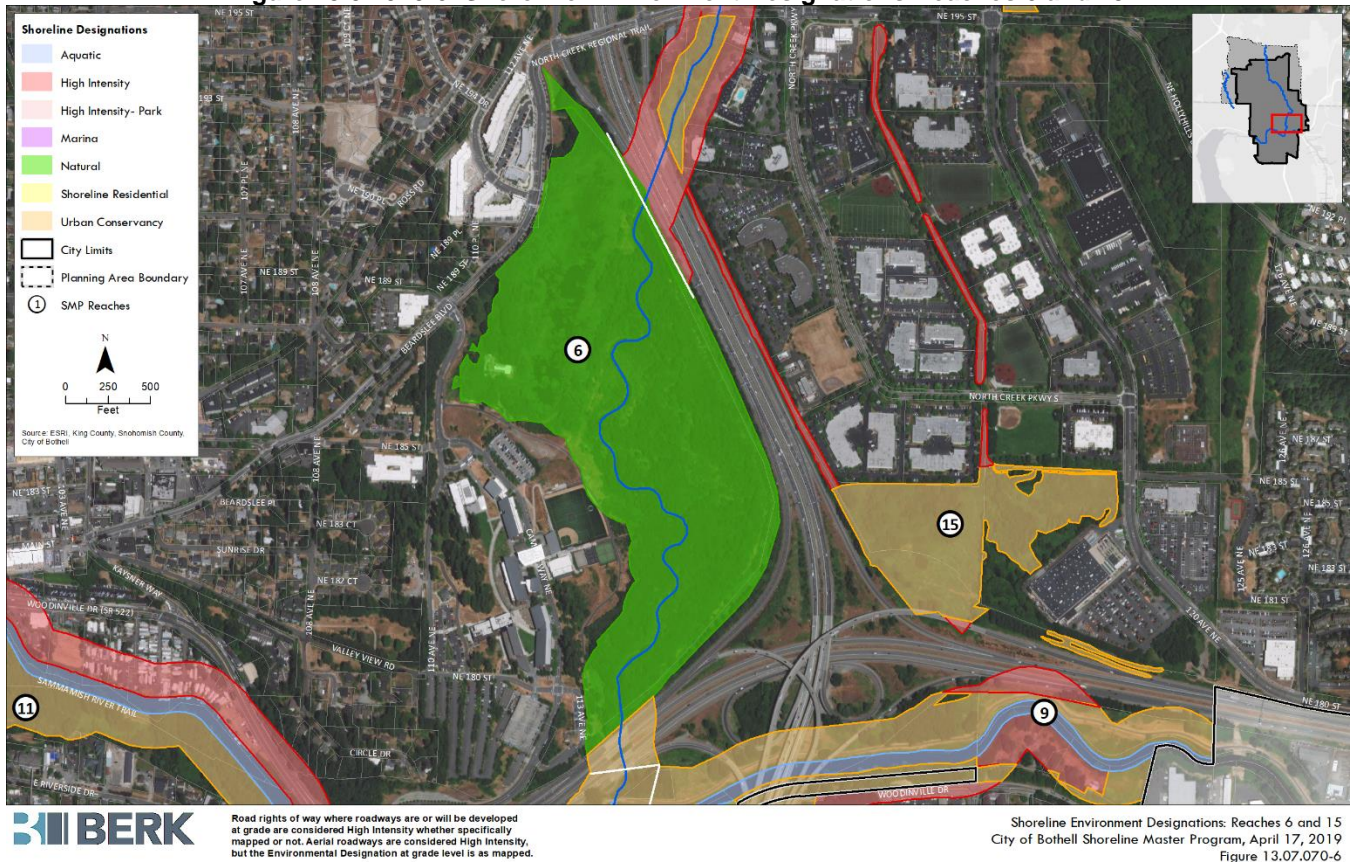


Figure 13.07.070-7. Shoreline Environment Designations Reaches 9 and 10

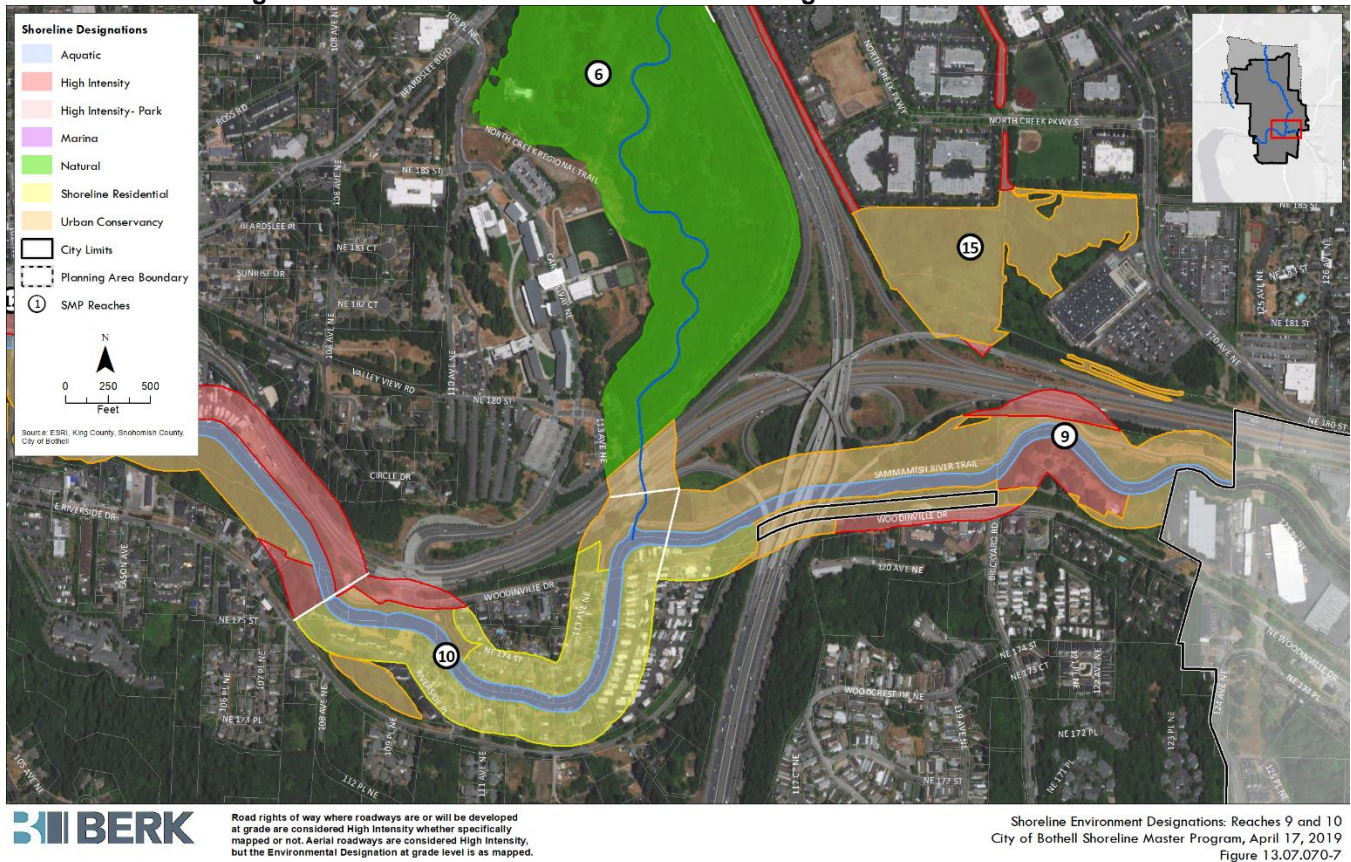


Figure 13.07.070-8. Shoreline Environment Designations Reaches 11 – 14

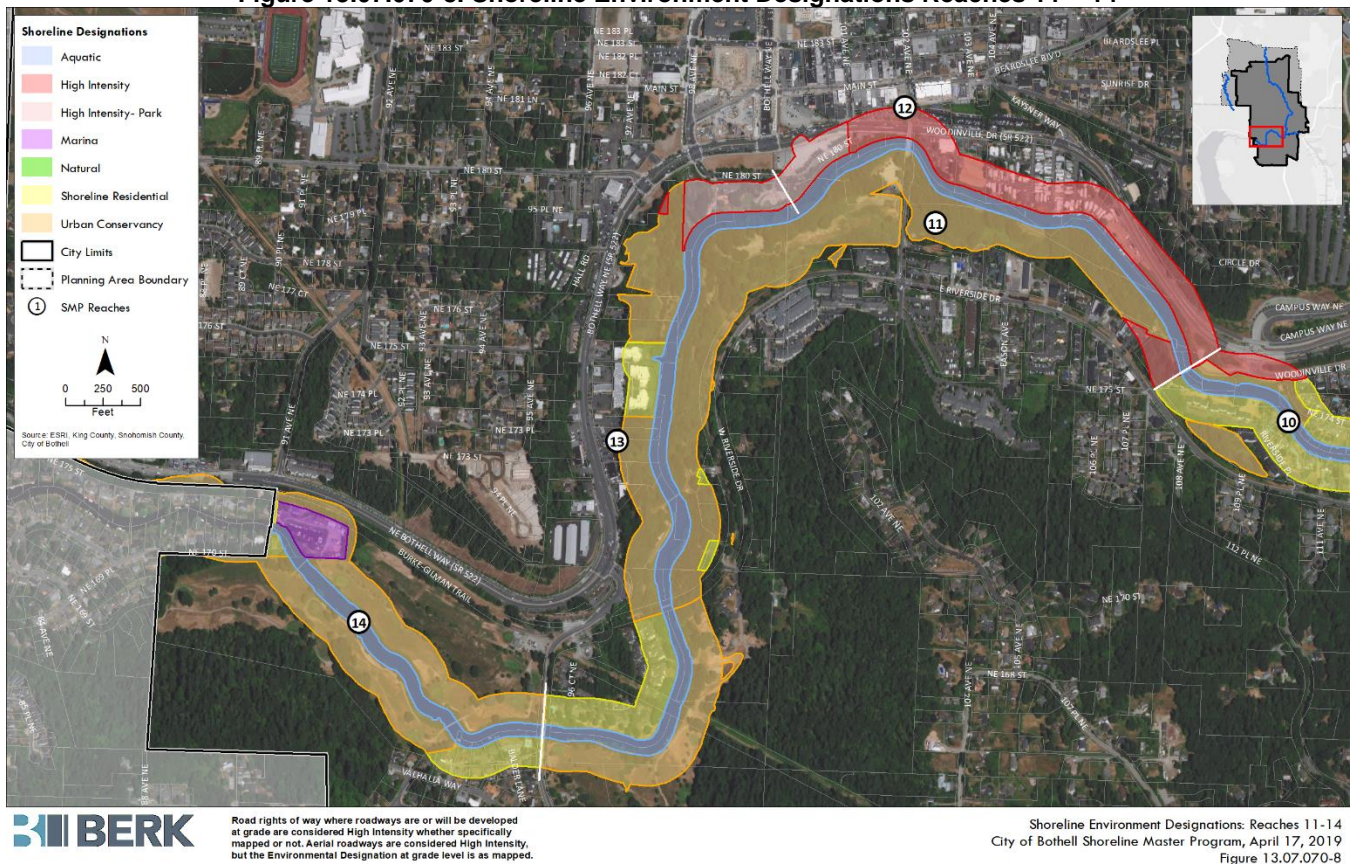


Figure 13.07.070-9. Shoreline Environment Designations Reaches 7a and 8

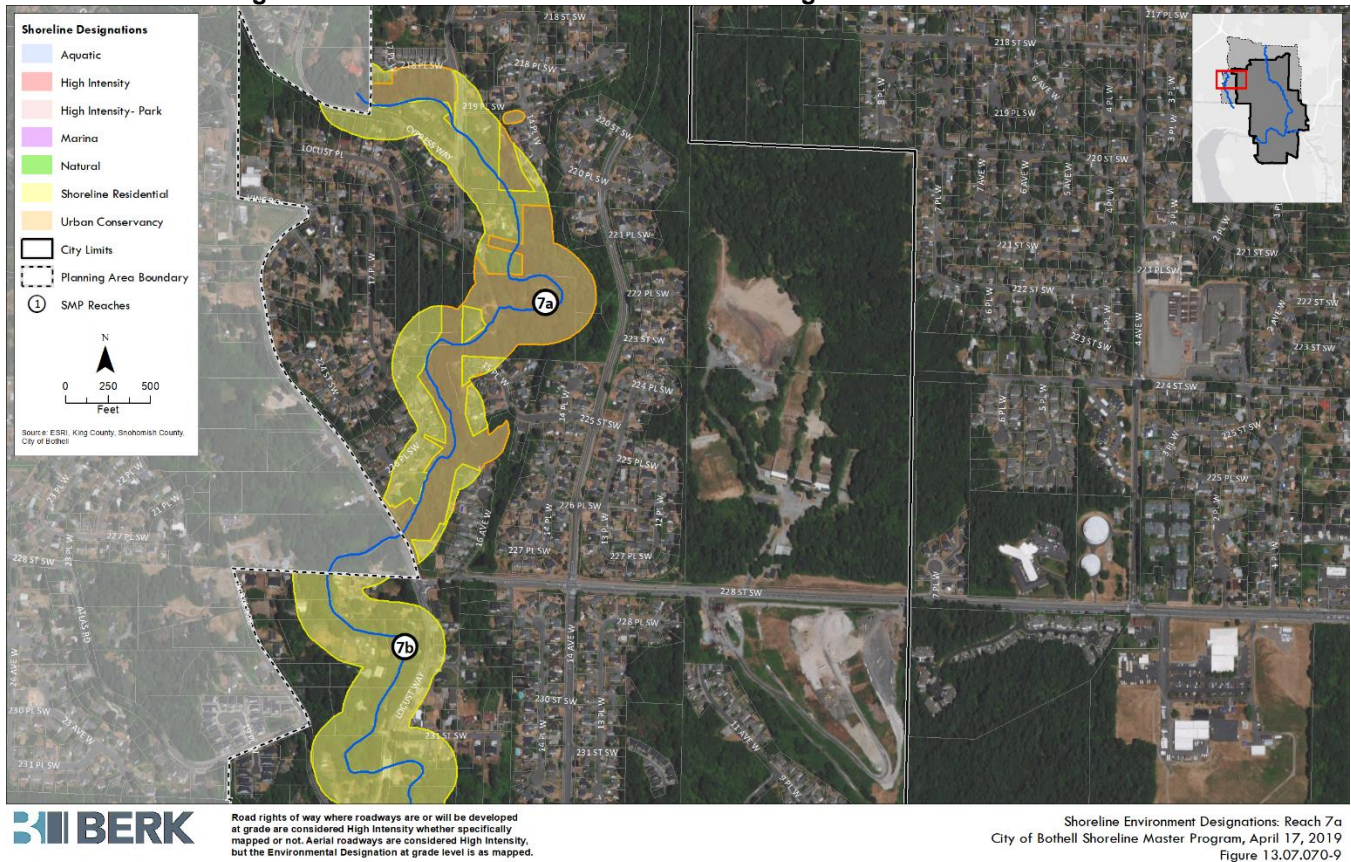
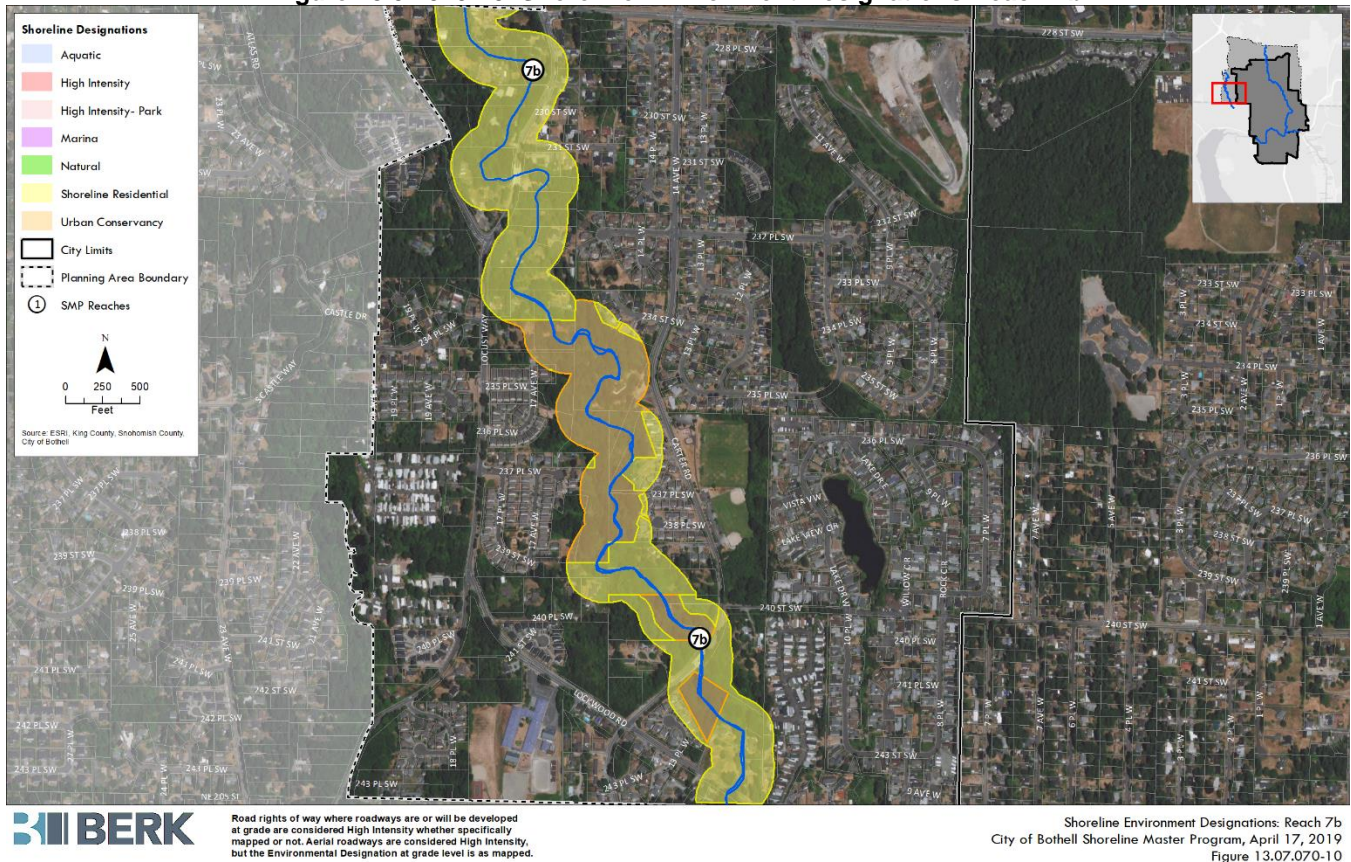


Figure 13.07.070-10. Shoreline Environment Designations Reach 7b



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Chapter 13.09 GENERAL REGULATIONS AND PERFORMANCE STANDARDS

* * *

13.09.030 Shoreline vegetation conservation.

E. Significant trees located in shoreline jurisdiction outside of wetlands and wetland, stream or shoreline buffers shall be retained using the preferences specified in subsection D of this section as a guide and consistent with the percent of the total in diameter inches of the significant trees located within the net buildable area of the subject property by number provided in Table 13.09.030-1; significant trees shall mean existing trees over eight inches in caliper as measured four feet above grade.

Table 13.09.030-1. Significant Tree Retention Requirements outside of Wetlands and Wetland, Stream or Shoreline Buffers (Percent by Diameter Inches~~Number~~)

Shoreline Water Body	Natural	Urban Conservancy	Shoreline Residential	High Intensity/High Intensity-Park or Marina
Sammamish River	NA	65	<u>2040</u>	<u>2040</u>
North Creek	90	65	35	35
Swamp Creek	NA	65	35	35

Updated tree retention measurement unit (by number to by diameter inches) and increased the 10% minimum retention in SR and HI along Sammamish River to match the new citywide tree retention requirements (20% by diameter).

I. The shoreline administrator shall require a maintenance bond or other surety be submitted to the city of Bothell to ensure retention of existing trees and plant material during construction. In the event any trees designated by the city to be retained are removed, the city shall have the option of enforcing any bond posted. Each tree identified for retention shall be bonded pursuant to Table 13.09.030-2:

Table 13.09.030-2. Tree Diameter and Bonding Required

Tree Diameter	Amount
8 – <u>12</u> 14 inches	<u>\$12,000</u>
<u>Larger than 12 – 16 inches</u>	<u>\$4,000</u>
<u>Larger than 16 – 20 inches</u>	<u>\$1,58,000</u>
<u>Larger than 20 – 24</u> 30 inches	<u>\$12,000</u>
<u>Larger than 24 – 28 inches</u>	<u>\$16,000</u>
<u>Larger than 28</u> 30 inches	<u>\$3,520,000</u>

NOTE: Changes made to reflect higher bond requirements found in BMC 12.18.030.F.

* * *

13.09.050 Public access.

* * *

C. Except for detached single-family residential dwellings and detached residential subdivisions, shoreline development proposals that have the potential to impact public views of the shoreline from public land or substantial numbers of residences, shall demonstrate protection of shoreline views through implementation of the following standards:

Note: Minor grammatical clarification.

* * *

E. In order to maintain public access, ~~The city shall not vacate such public rights-of-way or easements as a means of retaining public access.~~ Public access provided by public street ends, public utilities and rights-of-way shall not be diminished by a proposed use, activity or development.

NOTE: Suggested rearrangement of text adds clarity to the statement.

* * *

13.09.060 Flood hazard reduction.

* * *

B. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring hydrological and related processes² ~~or areas mapped by the Department of Ecology [pending] prepared consistent with WAC 173-26-221(3)(b).~~ Applicants for shoreline development or modification may submit a site-specific channel migration zone special study if they believe these conditions do not exist on the subject property ~~or Ecology's mapping is in error.~~ The CMZ special study must be prepared consistent with WAC [173-26-221](#)(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification.

* * *

² There are only four ~~Four~~ potential areas of channel migration ~~have been identified on North Creek~~ in the city. These are identified in the city's shoreline analysis report: 1) in North Creek – Centennial Park (Reach 2), 2) the open space/wetland area just north of 228th in North Creek – Canyon Park assessment unit (lower Reach 3), 3) south of 228th Street SE and north of 240th Street SE along the North Creek – Fitzgerald assessment unit (Reach 4), and 4) west of Interstate-405 and north of the North Creek confluence with the Sammamish River within the North Creek – Campus assessment unit (Reach 6).

NOTE: Endnote worded to more clearly indicate that these are the only CMZs in the City. The mapping effort that Ecology had once been planning was never undertaken, and Ecology has stated that it has no active CMZ mapping projects (per Lynn Schmidt, Ecology Flood Engineer, 28 December 2018). "Hydrological and related" was added to the definition consistent with the definition in WAC 173-26-020(7).

* * *

Chapter 13.11 USE-SPECIFIC AND MODIFICATION REGULATIONS AND PERFORMANCE STANDARDS

* * *

13.11.080 Forest practices.

A. Forest practice applications shall meet ~~all local~~ BMC Title Chapter 12.12, state, and federal regulations regarding forest practices and land clearing and ensure no net loss of ecological function. (Ord. 2112 § 3 (Exh. C), 2013).

B. A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the SMA and may require a substantial development permit, as required by WAC 222-50-020.

NOTE: Addition is response to discussion with the Board regarding Ecology SMP Update Checklist item 2017.e related to forestry regulation clarification.

* * *

13.11.140 Shoreline habitat and natural systems enhancement projects.

* * *

J. Relief from shoreline master program development standards and use regulations.

1. Purpose of section. This section incorporates statutory direction from RCW 90.58.580. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline jurisdiction into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.

2. Conditions and criteria for providing relief. The city may grant relief from standards and use regulations in this title when the following apply:

a. A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

- i. Land that had not been regulated under this title prior to construction of the restoration project is brought under shoreline jurisdiction; or
 - ii. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the Bothell SMP and this title; and
 - iii. Application of this title would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
 - b. The proposed relief meets the following criteria:
 - i. The proposed relief is the minimum necessary to relieve the hardship;
 - ii. After granting the proposed relief, there is net environmental benefit from the restoration project;
 - iii. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Bothell SMP and this title; and
 - iv. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
 - c. The application for relief must be submitted to the Washington State Department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then Ecology shall conduct its review when the city provides a copy of a complete application and all supporting information necessary to conduct the review.
 - i. Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its web site.
 - ii. Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the city if additional public notice is not required.
- 4. A substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

NOTE: Addition is response to Ecology SMP Update Checklist item 2009.a regarding "relief" procedures for instances in which a shoreline restoration project within a UGA creates a shift in Ordinary High Water Mark.

* * *

Chapter 13.13

CRITICAL AREAS IN SHORELINE JURISDICTION

* * *

13.13.020 Wetlands.

* * *

B. Wetland Ratings. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State wetland rating system documents (Washington State Wetland Rating Manual for Western Washington (revised), Department of Ecology Document No. 14-06-02904-06-025) or as revised by Ecology. These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland Rating Categories.

- a. Category I. Category I wetlands are those wetlands that (1) represent a unique or rare wetland type; or (2) are more sensitive to disturbance than most wetlands; or (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions. These include bogs, mature and old-growth forested wetlands, Wetlands of High Conservation Value, and wetlands that perform many functions very well (score 2370 points or more (out of 27400) on a completed rating form for the appropriate hydrogeomorphic class).
- b. Category II. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. ~~There are no estuarine or inter-dunal wetlands in Bothell.~~ Category II wetlands are those that score between 2054 and 2269 (out of 27400) points. These wWetlands scoring 51 to 69 points were judged to perform most functions relatively well, or performed one group of functions very well and the other two moderately well.
- c. Category III. Category III wetlands are wetlands with a moderate level of functions (scores between 1630 and 1950 points out of 27400) and can often be adequately replaced with a well-planned mitigation project. ~~These wWetlands scoring between 30 and 50 points~~ generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
- d. Category IV. Category IV wetlands have the lowest levels of functions (scores less than 1630 points out of 27400) and are often heavily disturbed. These are wetlands that should be able to be replaced, and in some cases be able to be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and also need to be protected.

* * *

3. Wetland Analysis. In addition to the minimum required contents of BMC 13.13.010(O), Critical Area Reports – Requirements, a critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

* * *

d. Functional evaluation for the wetland and adjacent buffer using the Washington State Wetland Rating System for Western Washington (revised), Department of Ecology Publication No. 14-06-02904-06-025 and including the reference of the method and all data sheets.

* * *

7. Wetland Buffers.

a. Standard Buffer Widths. Required standard wetland buffers, based on wetland category and habitat score, are as follows:

Table 13.13.020-1. Wetland Buffer Widths (In Feet)

Wetland Category	Standard (feet)	Buffer (in feet) if <u>6</u> 24—25 habitat points*	Buffer (in feet) if <u>7</u> 26—29 habitat points*	Buffer (in feet) if <u>8</u> – <u>9</u> 30—36 habitat points*
I	75	105	165	225
II	75	105	165	225
III	60	105	165	Not applicable
IV	40	Not applicable	Not applicable	Not applicable

* The habitat points are derived from one of three scoring elements (habitat, hydrology and water quality) included in the Washington State Wetland Rating System for Western Washington (revised), Department of Ecology Publication No. 14-06-02904-06-025.

NOTE: Changes are response to Ecology SMP Update Checklist item 2016.b regarding the 2014 update of the wetlands rating system. **This section was reviewed at the November Shorelines Board meeting, but inadvertently left out of the April 8 packet.**

* * *

NOTE: The subsection below was not included in the April 8 packet. The only change is the reference number.

F. General Requirements.

* * *

5. Category IV Wetlands. Activities and uses that result in unavoidable and necessary adverse impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the

applicant's objectives. Full compensation for the acreage and lost functions will be provided under the terms established under subsection G.69) of this section.

* * *

G. Compensatory Mitigation Requirements. Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the state Department of Ecology Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised, as revised.

* * *

NOTE: Board Member Aagaard proposed adding language similar to Ecology guidance on mitigation sequencing following the February 25 meeting. Staff feels the appropriate place for this would be in subsection 3.d below.
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3. Preference of Mitigation Actions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement. Mitigation actions that require compensation shall occur in the following order of preference:

- a. Restoring wetlands on upland sites that were formerly wetlands. Wetland restoration refers to actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
- b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. Wetlands creation refers to actions performed to intentionally establish a wetland at a site where it did not formerly exist. Creation should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
- c. Enhancing significantly degraded wetlands in combination with restoration or creation. Enhancement refers to actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.
- d. Preserving/ maintaining a wetland to remove threat or prevent decline, such as purchasing land.
Preservation does not result in gain of wetland areas.

NOTE: The following changes to existing code were developed after discussions with the Shorelines Board at the November 5, December 10, 2018 and February 25, March 11, 2019 and April 8 Shorelines Board meetings. In addition to responding to the discussions, this also incorporates, with some adaptation, written suggestions provided to the City by Board Members Gustafson and Aagaard following the February 25 meeting, by Gustafson following the March 11 meeting and Board input at the April 8 meeting. Language, including more detailed criteria for allowing out-of-kind mitigation, was adapted from Washington Department of Ecology's *Wetland Guidance for CAO Updates Western Washington Version* (Bunten and others, 2016; <https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>). The general term about identified City goals was replaced with two specific plans that have been adopted by the City Council. Staff recommends that these changes provide sufficient guidance for decisions on compensatory mitigation to be administrative, but the Board indicated on March 11 a preference to require a Shoreline Conditional Use Permit for off-site mitigation, which has a higher level of public notice and potential public participation, and requires Ecology approval, as shown in 5.b below. This version prevents applicants from using any mitigation tools that result in mitigation outside of the impacted drainage subbasin or reach.

For reference in reviewing these draft regulations, the City's definition of subdrainage basin in BCC 13.03 follows: "Subdrainage basin" or "subbasin" means the drainage area of the highest order stream containing the subject property impact area. "Stream order" is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on. This definition is nearly identical to Snohomish County's except that they insert "salmonid bearing" in front of streams. In many cases, the highest order stream containing the subject property within its drainage area is going to be North Creek or Swamp Creek itself.

Although the City's Shoreline Restoration Plan was finalized in 2012, it was formally adopted, along with the Comprehensive Plan Shoreline Element and shoreline regulations, in 2013 following Ecology's final approval.

4. Type and Location of Mitigation. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions ("in kind"). The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except the City may allow out-of-kind replacement of wetland type of functions when either:

a. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

b. Out-of-kind replacement of wetland type or functions will best meet watershed goals or restoration priorities in the Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan (WRIA 8 Salmon Plan) initially adopted by the City Council in 2005, and as updated or supplemented thereafter, or the Shoreline Restoration Plan adopted by the City Council in 2013, and as updated thereafter.

5. Location of Mitigation.

a. Compensatory mitigation actions shall be conducted on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable and will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation.

b. The City will review applications for off-site mitigation as a shoreline conditional use following the procedures for a Type III development application pursuant to BMC Title 11, Administration of Development Regulations.

c. The City may allow off-site mitigation only when an applicant can ~~Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, such as a mitigation bank located within Watershed Resource Inventory Area (WRIA) 8, implementation of a project found in the city's shoreline restoration plan, or a city of Bothell-sponsored fee-in-lieu program, compensatory mitigation for ecological functions shall be either in-kind and on site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration~~ except and when all of the following apply:

- (1)a- ~~There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should~~shall include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; position in the landscape; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- (2)b- ~~Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and~~
- (3)e- ~~Off-site locations may include state-certified mitigation banks, federally certified fee in lieu programs, applicant-owned properties, or public property subject to agreement with the City. shall be in the same subdrainage basin unless:~~

d. Off-site mitigation, when approved by the City, shall be required in the following order of preference, as illustrated in Figure 13.13.020.G.5.d below:

- (1) On an adjacent property in Bothell within the same subdrainage basin on North Creek or Swamp Creek, or on the Sammamish River.
- (2) In the same subdrainage basin in Bothell as the impacted wetland when the wetland is located in shoreline jurisdiction associated with North Creek or Swamp Creek, or on the Sammamish River in Bothell when the impacted wetland is located in shoreline jurisdiction associated with the Sammamish River.
- (3) Within the shoreline jurisdiction of the City of Bothell or its municipal urban growth area.
- (4) In adjacent jurisdictions within the same subdrainage basin on North Creek or Swamp Creek, or on the Sammamish River downstream of Bothell or upstream as far as the 145th Street NE bridge in Woodinville, only when the applicant can demonstrate that the mitigation project will provide equal or greater ecological benefits to the shoreline jurisdiction of the City of Bothell or its municipal urban growth area.

NOTE: Staff and consultants decided that identifying the extent of the upstream and downstream WRIA 8 reaches of the Sammamish above would clearer than referencing and defining reaches as discussed at the April 8 meeting.

Figure 13.13.020.G.5.d:



~~(1) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or~~

~~(2) Credits from a state-certified wetland mitigation bank located within the Sammamish River, North Creek, or Swamp Creek drainage basin are used as mitigation and the use of credits is consistent with the terms of the bank's certification;~~

~~(3) The mitigation occurs as part of a city of Bothell-sponsored fee-in-lieu program;~~

~~(4) Wetponds established and maintained for control of surface water shall not constitute replacement or enhancement for wetland alterations.~~

6e. Mitigation banks. The City may approve the use of credits from a certified wetland mitigation bank ~~may be used~~ to compensate for impacts located within the service area specified in the mitigation bank instrument only after the applicant has demonstrated consistency with Subsection G.5. If the impacts occur in the service area of more than one bank, the City will give preference ~~will be given~~ to a bank that has implemented restoration actions included in the *WRIA 8 Salmon Recovery Plan* initially adopted by the City Council in 2005, and as updated or supplemented thereafter, or the *Shoreline Restoration Plan* adopted by the City Council in 2013, and as updated thereafter. The City may allow the use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC ~~is allowed~~ if:

a. ~~(4)~~ The City determines that the proposed use of credits ~~it~~ would provide appropriate compensation for the proposed impacts; and

b. ~~(2)~~ The City determines that the proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and

c. ~~(3)~~ The City determines that the replacement ratios for projects using bank credits ~~is~~ are consistent with replacement ratios specified in the certified mitigation bank instrument.

~~7d.~~ In-Lieu Fee Mitigation: Applicants may use credits from ~~an~~ federally certified ~~approved~~ in-lieu-fee program that implements restoration projects with collected funds only after the applicant has demonstrated consistency with Subsection G.5~~may be used~~ and when all of the following conditions apply:

a. ~~(4)~~ The City determines that it would provide environmentally appropriate compensation for the proposed impacts.

b. ~~(2)~~ The City determines that the proposed use of credits is consistent with the terms and conditions of the federally certified~~approved~~ in-lieu-fee program instrument.

c. ~~(3)~~ The applicant's qualified wetland professional ~~Projects using in-lieu-fee credits shall calculate the have~~ debits associated with the proposed impacts ~~calculated by the applicant's qualified wetland professional~~ using the credit assessment method specified in the federally approved instrument for the in-lieu-fee program.

d. ~~(4)~~ The proposed impacts ~~are~~ must be located within the service area specified in the federally approved in-lieu-fee instrument, and the fees collected by the in lieu fee program sponsor will be applied to a project within the impacted area's subdrainage basin or the same Sammamish River reach. If the program has more than one project available in the subdrainage basin or Sammamish River reach, the City will give preference ~~will be given~~ to the project that will implement restoration actions included in the *WRIA 8 Salmon Recovery Plan* adopted by the City Council in 2005, as updated or supplemented thereafter, or the *Shoreline Restoration Plan* adopted by the City Council in 2013, as updated thereafter.

NOTE: The subsections below were not included in the April 8 packet. The only changes are the numbering.

~~85.~~ Mitigation Timing.

* * *

~~96.~~ Mitigation Ratios.

* * *

NOTE: The Chapter below was introduced at the December Shoreline Board meeting, but inadvertently omitted from the draft presented at the March 11 public hearing. No revisions from the originally proposed amendments were requested at the December meeting, and none are included below.

Chapter 13.17 ADMINISTRATION, PERMITS, AND ENFORCEMENT

* * *

13.17.040 Exemption from permit requirements.

* * *

E. Exempt Activities. WAC [174-27-040](#) lists activities which are exempted from the requirement to obtain a shoreline substantial development permit. This list is duplicated below with clarifications to reflect local circumstances. In all cases, should a conflict exist, the exemptions of WAC [173-27-040](#) shall control. The following developments shall not require substantial development permits but shall be required to comply with the applicable Bothell SMP standards and provisions:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~\$5,7187,047~~, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection went into effect on September 2, 2017 ~~and~~ must be adjusted for inflation by the Office of Financial Management every five years, ~~beginning July 1, 2007~~, based upon changes in the consumer price index per WAC [173-27-040](#)(2)(a). For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW [90.58.030](#)(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

* * *

8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if the fair market value of the dock does not exceed: (A) \$20,000 for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or (B) \$10,000 for all other docks constructed in fresh waters. ~~but~~ However, if subsequent construction ~~having a fair market value exceeding \$2,500~~ occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

NOTE: Changes above are response to Ecology SMP Update Checklist item 2014.a regarding exemption cost thresholds for docks.

* * *

17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

NOTE: Addition is response to Ecology SMP Update Checklist item 2016.a regarding new shoreline permit exemption for retrofitting existing structures to comply with the Americans with Disabilities Act.

* * *

13.17.045 Developments not required to obtain shoreline permits or local reviews.

Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

A. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

B. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

C. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review. The department of transportation must provide written notification of projects and activities authorized under this section with a cost in excess of one million dollars before the design or plan is finalized to all agencies with jurisdiction, agencies with facilities or services that may be impacted, and adjacent property owners.

D. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

E. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

NOTE: Additions above are in response to Ecology SMP Update Checklist item 2017.c regarding clarification of exceptions to local review under the SMA.

* * *

13.17.100 Procedures applicable to substantial development permits (SDP).

* * *

E. Decision. An appeal of a shoreline substantial development permit shall be to the Bothell hearing examiner and shall be filed pursuant to the procedures of BMC [11.14.005](#). Appeals of the Bothell hearing examiner shall be to the state Shorelines Hearings Board and shall be filed within 21 days of the receipt of the date of filing ~~Department of Ecology's permit action letter~~ as set forth in RCW [90.58.180](#). (Ord. 2112 § 3 (Exh. C), 2013).

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.d regarding filing procedures.

13.17.110 Procedures applicable to shoreline conditional use permits (SCUP).

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G. Decision Process.

1. Once the city has approved a conditional use permit it will be forwarded to the state Department of Ecology for its review and approval/disapproval jurisdiction under WAC [173-27-200](#).
2. The permit shall state that construction pursuant to a permit shall not begin or be authorized until 21 days from the date the permit decision ~~was filed~~^{is received} as provided in RCW [90.58.140](#)(6); or until all review proceedings are terminated if the proceedings were initiated within 21 days from the date of ~~filing~~^{receipt} as defined in RCW [90.58.140](#)(~~5~~) and (6).
3. Appeals of a shoreline conditional use permit shall be to the state Shoreline Hearings Board and shall be filed within 21 days of the date the decision of the Department of Ecology is transmitted by the Department of Ecology to the city~~receipt of the Department of Ecology's permit action letter, as set forth in RCW [90.58.180](#)~~.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.d regarding filing procedures.

13.17.120 Procedures Applicable to Shoreline variances.

F. Decision Process.

1. Once the city has approved a variance permit it will be forwarded to the state Department of Ecology for its review and approval/disapproval jurisdiction under WAC [173-27-200](#).
2. The permit shall state that construction pursuant to a permit shall not begin or be authorized until 21 days from the date the permit decision ~~was filed~~^{is received} as provided in RCW [90.58.140](#)(6); or until all review proceedings are terminated if the proceedings were initiated within 21 days from the date of ~~filing~~^{receipt} as defined in RCW [90.58.140](#)(~~5~~) and (6).
3. Appeals of a shoreline variance shall be to the state Shoreline Hearings Board and shall be filed within 21 days of the date the decision of the Department of Ecology is transmitted by the Department of Ecology to the city~~receipt of the Department of Ecology's permit action letter, as set forth in RCW [90.58.180](#)~~.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.d regarding filing procedures.

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